

# EXHIBIT D

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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 EASTERN DIVISION – RIVERSIDE  
13

14	_____	) CASE NO. ED 07-cv-287 VAP-OP
15		)
16	JOHN TRUE, et al.,	)
17	Plaintiffs,	) <b>PLAINTIFFS' CONSOLIDATED</b>
18	v.	) <b>RESPONSE TO OBJECTIONS</b>
19		) <b>TO SETTLEMENT</b>
20	AMERICAN HONDA MOTOR CO.,	) <b>AGREEMENT</b>
21	INC.,	)
22	Defendant.	) <b>DATE: FEBRUARY 22, 2010</b>
23	_____	) <b>TIME: 10:00 am</b>
24		) <b>COURTROOM 2</b>
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**I. INTRODUCTION**

Out of a total Settlement Class<sup>1</sup> size of 176,990, the Parties received 10 objections<sup>2</sup> to the settlement (“Objections” or “Objectors”), an *amicus* brief filed by a group of state Attorneys General (“*Amici*’s Brief”)<sup>3</sup>, and 5 letters from unrepresented class members commenting upon the Settlement.<sup>4</sup> As more fully described below, the arguments of the objectors, *Amici*, and commenting Settlement Class Members do not provide a reasonable basis to deny final approval.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meanings as ascribed to them in the Settlement Agreement and Release and/or Plaintiffs’ Memorandum in Support of Motion for Final Approval of Settlement

<sup>2</sup> Of the 10 Objections, only 4 appear on the docket, as they were filed by represented Settlement Class Members. The remaining Objections were sent directly to Class Counsel by unrepresented Settlement Class Members, and are attached hereto as Exhibit A. The 10 Objections received are as follows: Objection to Proposed Class Action Settlement filed by Steven Vise and Richard Vise (“Vise Objection”)(Dkt # 124); Objections of Francine P. Peterman (“Peterman Objection”)(Dkt #123); Objection to Proposed Settlement filed by Center for Class Action Fairness (“CCAF Objection”)(Dkt #117); Objections of Class Members Joseph K. Goldberg, Valerie M. Nannery, and Katherine A. Burghardt (“Public Citizen Objection”)(Dkt # 119); Letter Objection of Daniel Bergman (Exh. A pg. 5-6); Letter Objection of Gerald Nicholson (Exh. A pg. 18-33); Letter Objection of Norman Whitton (Exh. A. pg. 2-4); Letter Objection of Keith R. Cyrnek (Exh. A pg. 7-9 ); Letter Objection of Michael A. Belshe (Exh. A pg.10-15); and Letter Objection of Robert A. Tighe (Exh. A pg. 16-17).

<sup>3</sup> Brief *Amicus Curiae* of the Attorneys General of California, Tennessee, Texas, Alabama, Alaska, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Maine, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, South Dakota, Vermont, and West Virginia in Opposition to the Proposed Settlement Agreement (“*Amici*’s Brief”) (Dkt # 120).

<sup>4</sup> “Letters of comment” refer to correspondence mailed to Class Counsel and/or the Court that do not meet the requirement for objections as outlined in the Mailed Notice as well as arguments advanced by Settlement Class Members who are ineligible to object to the Settlement based on their opt-out status. Agreement IX.M. For the Court’s convenience, these letters are attached hereto as Exhibit B. The following letters of comment fall into this category: Comment of Eric Strickland (Exh. B pg. 39-43) (ineligible to object based on opt-out status); Comment of David V. Sherwood (Exh. B pg. 37-38) (ineligible to object based on opt-out status); Comment of Jason Novak (Exh. B. pg. 44) (ineligible to object based on opt-out status); Comment of Debbie Smith (Exh. B pg 36)(objection does not meet requirements outlined in Class Notice); Comment of Elizabeth Eyre Seltzer (Exh B pg. 35) (objection does not meet requirements outlined in Class Notice).

**II. THE DVD HAS A CLEAR VALUE TO SETTLEMENT CLASS MEMBERS AND IS AN IMPORTANT COMPONENT OF THE SETTLEMENT**

Certain Objectors and the *Amici* mistakenly claim that the DVD being produced exclusively for the Settlement is without value because the information is publicly available for free or has already been provided by Honda.<sup>5</sup> Certain other Objectors make mistaken assumptions on how the DVD is to be valued, and question the necessity of undertaking to mail the DVD to each and every Settlement Class Member.<sup>6</sup> As explained below, these Objections must be rejected, as the DVD provides significant value to Settlement Class Members and cannot be ignored when evaluating the benefits to be offered under this Settlement.

**A. The Information on the DVD is Superior to Publicly Available Information on Fuel Economy**

Objections that the DVD is without value because the information to be contained on the DVD is already available for free elsewhere fail for several reasons. First and most importantly, these objections ignore the questionable quality, dependability, safety and specificity of publicly-available information regarding fuel economy on the internet and elsewhere. A significant amount of publicly-available information on fuel economy, particularly as it relates to “hypermiling,” a term often used to describe driving techniques designed to achieve fuel economy in excess of a vehicle’s EPA rating, can be incredibly dangerous or even illegal.<sup>7</sup> A small subset of articles explaining the dangers of

<sup>5</sup> *Amici’s* Brief at 8-9 (Dkt #120); CCAF Objection at 2, 9 (Dkt. #117); Public Citizen Objection at 1, 7 (Dkt. # 119). The *Vise* Objection also includes an unsupported conclusory allegation that the DVD has “no value.” *Vise* Objection at 3 (Dkt. #124).

<sup>6</sup> See, e.g. Public Citizen Objection at 9-10 (Dkt. # 119).

<sup>7</sup> See, e.g. “Cops: “hypermiling” Often Risky, Illegal,” available at <http://www.cbsnews.com/stories/2008/06/30/earlyshow/main4218439.shtml> (noting that AAA and Connecticut police have issued warnings regarding hypermiling); “Hypermiling: Quest for Ultimate Fuel Economy,” available at <http://www.edmunds.com/advice/fueleconomy/articles/120880/article.html>, (describing dangerous hypermiling practices of placing cardboard over the

1 certain fuel-saving driving techniques is attached hereto as Exhibit C. Even  
2 articles cited by Objectors in support of their objections contain certain of these  
3 dangerous and illegal driving techniques. For example, an internet news article  
4 cited by CCAF in support of its Objection urges drivers to “. . . overinflate their  
5 tires to cut rolling resistance, seize every chance to coast with their gasoline  
6 engines off, and sometimes ‘draft’ like race cars behind larger vehicles.”<sup>8</sup>  
7 Additionally, a news article cited by Public Citizen in support of its Objection  
8 encourages drivers to “consider turning the engine off during prolonged stays in  
9 one place such as ferry or railroad crossings,”<sup>9</sup> which could be a safety concern.  
10 Furthermore, publicly-available information on fuel economy often comes from  
11 questionable sources, with car manufacturers urging drivers to be wary of such  
12 advice.<sup>10</sup> In contrast to these questionable sources of information, the information  
13 contained in the DVD will come straight from the manufacturer of the car – Honda

14 radiator, which can cause overheating, and “ridge riding” with one set of tires  
15 on a painted lane divider to reduce friction, which can lead to accidents); “The  
16 Dangers of Hypermiling,” available at [http://www.aaany.com/CarandTravel/Web\\_Only\\_Stories/The\\_Dangers\\_of\\_Hyp\\_ermiling.asp](http://www.aaany.com/CarandTravel/Web_Only_Stories/The_Dangers_of_Hyp_ermiling.asp) (describing the dangers of hypermiling); “Motorists risking their  
17 lives to save on petrol,” available at <http://www.smh.com.au/news/national/motorists-risking-their-lives/2008/08/23/1219262622708.html> (same); “Extreme Hypermiling to Save  
18 Fuel not the Answer,” available at <http://www.bizcentral.org/american-trucking-association/2009/02/hypermiling-to-save-fuel-not-t.php> (describing the  
19 American Trucking Association’s position that hypermiling is dangerous).

20 <sup>8</sup> “Hypermilers wring out every last bit of mpg,” available at  
21 <http://www.msnbc.msn.com/id/18923454/>. (cited by CCAF brief at 9). Notably,  
22 “coasting” is illegal in most states, including the two states represented by the  
23 authors of the *Amici*’s brief. See, e.g. Calif. Vehicle Code § 21710; Tenn. Code  
24 § 55-8-167.

25 <sup>9</sup> [http://www.caranddriver.com/features/08q3/battle\\_high\\_gas\\_prices\\_tips\\_to\\_boost\\_your\\_fuel\\_economy-feature/driving\\_habits\\_continued\\_page\\_3](http://www.caranddriver.com/features/08q3/battle_high_gas_prices_tips_to_boost_your_fuel_economy-feature/driving_habits_continued_page_3) (cited by  
26 declaration of Julian Helisek, Exhibit 7 to Public Citizen Objection)

27 <sup>10</sup> See, e.g. <http://www.dailyfueleconomytip.com/about>, a website cited by Public  
28 Citizen in support of its objection, identifying its author as a guy who is “frugal  
and really enjoy[s] saving money”; “Hypermilers wring out every last bit of  
mpg,” available at <http://www.msnbc.msn.com/id/18923454/>. (cited by CCAF  
brief at 9) (quoting a spokesman for Honda Motor Co. who explains that “the  
company shares hypermilers’ enthusiasm for high mileage but cannot endorse  
some of their techniques”).



1 – most intimately familiar with the HCH.

2 Second, this Objection ignores the reality that no single publicly available  
3 source contains all of the information to be presented in the DVD in one place, in a  
4 convenient medium. Tellingly, the declaration of Julian Helisek (submitted by  
5 Public Citizen to bolster the position that information in the DVD is already  
6 publicly available) acknowledges this fact by listing no fewer than 13 websites as  
7 well as hundreds of pages of government publications and vehicle owners’  
8 manuals as sources for the information on various individual subtopics of the DVD  
9 outline.<sup>11</sup> Likewise, the HCH owners’ manual, which contains some information  
10 regarding fuel economy and the features of the HCH, is disjointed and fuel  
11 economy information is buried within the technical specs and auto jargon filling  
12 the 200-plus-page manual.<sup>12</sup> In contrast, the fuel economy information on the  
13 DVD will be concisely provided in a user-friendly fashion that is easy for the lay  
14 driver to understand and will be presented in a manner that is focused on  
15 maximizing fuel economy.

16 **B. The DVD provides Real Value to Settlement Class Members**

17 Other Objections addressing the value of the DVD also fall short, as they  
18 mischaracterize the Settlement or are otherwise unsupported. As acknowledged by  
19 the *Amici*, the value of the DVD lies in the “information it contains and the manner  
20 in which that information is communicated.”<sup>13</sup> Plaintiffs have provided illustrations  
21 of how the information on the video on fuel economy can translate into real dollars  
22 in anticipated fuel savings for Settlement Class Members. (Supplemental  
23 Memorandum in Support of Preliminary Approval, Dkt. 105 # at 10-12). Hundreds  
24

25  
26 <sup>11</sup> Declaration of Julian Helisek, Exhibit 8, Public Citizen Objection (Dkt # 119)

27 <sup>12</sup> See, e.g., Public Citizen Objection Exhibit 2B (Dkt. #117)(excerpts from 2004  
HCH Owners’ Manual and Quick Start guide) citing the disjointed page ranges  
of 52-63; 89; 130-138

28 <sup>13</sup> *Amici’s* Brief at 7 (Dkt #120).

1 of dollars in savings on fuel efficiency as the result of knowledge gained by the  
2 DVD, while not a check, is still a material benefit to disgruntled Settlement Class  
3 Members with the desire to take advantage of the opportunity to apply this  
4 enhanced knowledge of fuel economy.

5       Objections that Plaintiffs are attempting to value the DVD based on the cost  
6 of production or commercially available alternatives are just wrong.<sup>14</sup> In moving  
7 for preliminary approval, Plaintiffs provided anecdotal facts about fuel economy  
8 videos available in the marketplace purely as a reference point for the Court.  
9 Another Objector notes that the costs of producing and individually mailing the  
10 DVD to each Settlement Class Member can be avoided and passed on to class  
11 members because the video will be posted on the internet.<sup>15</sup> This argument is  
12 misguided and circular, as it ignores that (a) absent this Settlement, no video would  
13 exist to be distributed in any media; (b) not all class members will have the  
14 technical capabilities to view a streaming video online; and (c) that class members  
15 will be able to reference the DVD even after the fuel economy video has gone off-  
16 line.

### 17 **III. THE RELEASE IS NARROWLY TAILORED**

#### 18 19 **A. The Release does Not Purport to Restrict Class Member 20 Participation in Administrative or Governmental Proceedings**

21       The *Amici* argue that certain language in the Release seeks “to prohibit class  
22 members from participating in subsequent regulatory actions.”<sup>16</sup> While the Parties  
23 do not believe the language of the Released Claims, as initially drafted, restricted  
24 the ability of Settlement Class Members to participate in administrative  
25 proceedings, nor did the Parties intend to restrict such activity, the Parties

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26 <sup>14</sup> CCAF Objection at 2, 9 (Dkt. #117); Public Citizen Objection at 7 (Dkt. #119).

27 <sup>15</sup> Public Citizen Objection at 9-10 (Dkt. #119).

28 <sup>16</sup> *Amici*’s Brief at 20, 27 (Dkt. #120).

1 nonetheless determined that a clarification of the Released Claims would ease  
2 concerns raised by the *Amici* regarding the scope of the Released Claims. As such,  
3 the Parties clarified this language by Letter Agreement, making clear that the  
4 Released Claims do not purport to encompass class member participation in  
5 administrative or governmental proceedings. Letter Agreement (Exh. A to  
6 Plaintiffs' Memo in Support of Final Approval ("Plaintiffs' Final Approval  
7 Memorandum"), filed concurrently herewith). This Objection is moot.

## 8 **2. Warranty Claims are Not Released**

9 Objections stating that warranty, manufacturing, design or other claims  
10 concerning the HCH will be released as a result of the Settlement misread the plain  
11 language of the Agreement.<sup>17</sup> The Release specifically excludes warranty claims  
12 from coverage.<sup>18</sup> The Released Claims are narrowly tailored to cover only  
13 *Settlement Class Members'* claims related to the *advertising* of the *fuel economy* of  
14 the HCH. Contrary to the *Amici's* and class member Belshe's Objections, warranty  
15 claims, manufacturing claims, and design claims are preserved.<sup>19</sup> The Release as  
16 currently written does not cover claims unrelated to the advertising of the fuel  
17 economy of the HCH.<sup>20</sup> As such, arguments that the Release and/or Released

18 <sup>17</sup> See *Amici's* Brief at 19 (Dkt. #120); Letter objection of Michael A. Belshe (Exh.  
19 A pg.10-15).

20 <sup>18</sup> Agreement at I.HH (Dkt. #91) ("Nothing in this Agreement shall be interpreted  
21 to modify or diminish the manufacturer's limited warranty with respect to a  
22 Class Vehicle; provided, however, that any such claim of breach of any  
23 warranty or any extended warranty based on the advertising or representations  
24 made by AHM with respect to fuel economy, mileage or m.p.g. are in fact  
25 released.")

26 <sup>19</sup> See *Amici's* Brief at 19 (Dkt. #120)(mistakenly claiming that the proposed  
27 settlement would broadly require the class to waive all claims related to the  
28 advertising, manufacture, design, or sale of the HCH); Letter Objection of  
Michael A. Belshe (Exh. A pg.10-15)(implying that warranty claims concerning  
the IMA battery will be released).

<sup>20</sup> Under the Agreement, Released Claims are narrowly defined as including only  
those relating to "... the *advertising* of the *fuel economy* or *m.p.g.* of the HCH,  
AHM's *representations concerning the fuel economy* or *m.p.g.* of the HCH, and  
any claims that could have been or should have been brought in the Lawsuit by  
the Named Plaintiffs and/or Settlement class ..." Agreement I.HH (Dkt #91)  
(emphasis added).

1 Claims are overbroad are unfounded.

2 **IV. NO ADDITIONAL INJUNCTIVE RELIEF IS NECESSARY DUE TO**  
3 **AMENDMENTS TO EPA TESTING GUIDELINES**

4 Certain Objectors and the *Amici* posit that the injunctive relief afforded by  
5 the Settlement is insufficient, arguing that a change in advertising language from  
6 “may” to “will” is nominal, and that the 24-month duration of the injunction does  
7 not ensure future compliance.<sup>21</sup> These Objections are insufficient to challenge final  
8 approval of the Settlement. More importantly, they ignore the recent amendments  
9 to the EPA’s fuel economy testing guidelines, which, beginning with model year  
10 2008, resulted in lowered fuel economy testing estimates for almost all vehicles,  
11 but particularly for hybrid vehicles.<sup>22</sup> Notably, the EPA’s release regarding this  
12 rule change states that “in vehicles that achieve generally better fuel economy,  
13 such as gasoline-electric hybrid vehicles, new city estimates will be about 20-30  
14 percent lower than [previous] labels, and new highway estimates will be 10 to 20  
15 percent lower. The nature of current hybrid technology . . . makes a hybrid’s fuel  
16 economy system more sensitive to certain factors such as colder weather and air  
17 conditioning use”(emphasis added).<sup>23</sup> Additionally, nearly all vehicles are updated  
18 each model year, rendering pre-existing advertisements stale.<sup>24</sup> Finally, a recent  
19 visit to Honda’s website revealed that “actual mileage will vary” disclaimer  
20 language is already being employed.

21  
22  
23  
24 <sup>21</sup> See *Amici*’s Brief at 19 (Dkt. #120); CCAF Objection 10 (Dkt. #117).

25 <sup>22</sup> See Regulatory announcement: EPA Issues New Test Method for Fuel Economy  
26 Window Stickers, EPA420-F-06-069, available at  
<http://www.epa.gov/fueleconomy/420f06069.htm>, attached hereto as Exhibit D.

27 <sup>23</sup> *Id.*

28 <sup>24</sup> See, e.g., Vise Objection at 3 (Dkt # 124) (noting that the advertised mileage for  
the HCH changed each year).

**V. THE CASH AND CASH REBATES HAVE A CLEAR VALUE TO SETTLEMENT CLASS MEMBERS**

Certain Objectors and the *Amici* contend that Options A and B do not provide substantial value to the Class, contending, in fact, that these options are effectively "worthless" because of their coupon nature.<sup>25</sup> Others argue that the value of these options are diminished because of a low expected claims rate<sup>26</sup>, a burdensome claims procedure<sup>27</sup>, and restrictions on use.<sup>28</sup> Still others claim that Options A and B provide a benefit to Honda, as opposed to Settlement Class Members.<sup>29</sup> As explained below, this criticism is without merit, and does not provide a reasonable basis for denying final approval of the Settlement.

**A. Coupon Settlements are Not Prohibited**

Certain Objectors mischaracterize the Settlement as a pure coupon settlement and claim that because coupon settlements are subject to heightened scrutiny under the Class Action Fairness Act ("CAFA"), final approval of this Settlement should be denied.<sup>30</sup> These Objectors latch on to language in the Senate Judiciary Committee's Report on CAFA Legislation suggesting that coupon

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<sup>25</sup> *Amici's* Brief at 16 (Dkt #120); CCAF Objection at 4 (Dkt #117); Public Citizen Objection at 1, 12-13 (Dkt #119).

<sup>26</sup> *Amici's* Brief at 16 (Dkt. #120); CCAF Objection at 4 (Dkt#117); Public Citizen Objection at 1, 12-13 (Dkt. #119).

<sup>27</sup> CCAF Objection at 1, 4, 10, 14 (Dkt. #117); Public Citizen Objection at 1, 16 (Dkt. #119); *Vise* Objection at 4 (Dkt. #124).

<sup>28</sup> *Amici's* Brief at 16-17 (Dkt #120); Public Citizen Objection at 15 (Dkt #119); CCAF Objection at 5-6, 15 (Dkt #117).

<sup>29</sup> *Amici's* Brief at 17-19 (Dkt # 120); CCAF Objection at 8; Public Citizen Objection at 1(Dkt. #117); *Peterman* Objection at 3 (Dkt. #123).

<sup>30</sup> See CCAF Objection at 14 (arguing that coupon nature of the relief weighs against final approval); *Amici's* Brief at 11-13 (Dkt. #120) (suggesting that CAFA placed limits on coupon settlements); Public Citizen Objection at 10-11(Dkt. #119) (arguing that coupon settlements have been criticized and must be avoided); *Vise* Objection at 3 (Dkt. #124)(making a conclusory, unsupported argument that coupon settlements are disfavored and should not be approved); *Peterman* Objection at 4-5 (Dkt. #123)(arguing that coupon settlements cannot be adequately valued, and as such cannot be approved).

1 settlements should be disfavored.<sup>31</sup> These Objections lack merit, as CAFA does not  
2 prohibit coupon settlements nor does CAFA impose requirements for final  
3 approval above or beyond what was already required by Fed. R. Civ. P. 23.

4 First and foremost, it must be emphasized that this Settlement cannot be  
5 properly characterized as a pure “coupon settlement,” as the elements of this  
6 Settlement must be evaluated as a whole, and not in isolation. The DVD  
7 component of the Settlement provides prospective relief to Settlement Class  
8 Members in the form of education to achieve real dollar savings on fuel. Option C  
9 provides cash relief to those Settlement Class Members aggrieved enough to take  
10 what AHM would consider to be the first step towards litigation in lodging a  
11 Complaint with AHM. Options A and B complement the DVD and Option C by  
12 providing substantial cash rebates on the purchase of a new vehicle. While this  
13 Settlement contains elements of a coupon-type nature, it may not properly be  
14 characterized as a “coupon settlement,” since the value of the Settlement may only  
15 be determined by examining the Settlement’s benefits in their entirety, and not by  
16 cherry-picking certain components of the Settlement in isolation.

17 Second, and notably, while the pros and cons of coupon settlements were  
18 carefully considered by Congress in enacting CAFA (as reflected in the Senate  
19 Judiciary Committee’s Report), the lack of a ban on coupon-type relief in CAFA  
20 suggests that coupon-type relief has a place in settlements and can provide  
21 valuable relief to a class. Instead of banning coupon-type relief, Congress narrowly  
22 focused CAFA’s coupon provisions on the interplay between coupon settlements  
23 and attorneys’ fees, imposing limits on fees *only where such fees are based on the*  
24 *value of the noncash benefits being offered to the settlement class.*<sup>32</sup> Here,  
25 attorneys’ fees are based entirely on lodestar, and in fact, are appreciably less than  
26 lodestar, so CAFA’s fee limitations are not implicated.

27 <sup>31</sup> *Amici’s* Brief at 9-11 (Dkt #120).

28 <sup>32</sup> *See* 28 U.S.C. §§ 1332(d), 1453, 1711-1715.



1 No additional requirements for final approval of settlements were imposed  
2 by CAFA that were not already encompassed by Fed. R. Civ. P. 23.<sup>33</sup> As such,  
3 Objections urging the Court to reject the Settlement based solely on the inclusion  
4 of coupon-type relief are meritless.

5 **B. The Projected Claim Rates are Conservative**

6 Objectors and *Amici* contend that Plaintiffs' expert's conservative claim  
7 rates of 6% and 7% for the cash rebates are overstated, and should be much lower  
8 based on "comparable" claims data in other coupon settlements and on the  
9 infrequency with which consumers purchase automobiles.<sup>34</sup> These Objections fail  
10 for several reasons.

11 First, the relevant "comparable" claims rates in vehicle cases cited by  
12 Objectors reference settlements based on defective or dangerous vehicles or  
13 products.<sup>35</sup> These cases are not comparable to the instant case. Unlike the GM  
14 Trucks case<sup>36</sup> (wherein plaintiffs alleged that side-mounted fuel tanks in certain  
15 GM models have a dangerous tendency to catch fire or explode during a side  
16 collision) or the Ford Rollover case<sup>37</sup> (wherein plaintiffs alleged that Ford  
17 Explorers contained a faulty design that resulted in the vehicle being more prone to  
18 dangerous rollovers in emergency situations), Plaintiffs have not alleged that the

19  
20 <sup>33</sup> These include Section 1712's requirement that the Court hold a fairness hearing  
21 and make written findings on fairness, as well as the Court's ability to require a  
22 valuation of the settlement and direct alternative distribution of unclaimed  
23 settlement funds, all of which were already encompassed by Fed. R. Civ. P. 23  
24 and impose no additional requirements for review of coupon settlements. *See*  
25 *Amici's* Brief at 9-13 (Dkt. #120).

26 <sup>34</sup> *Amici's* Brief at 16 (Dkt. #120); CCAF Objection at 4 (Dkt. #117); Public  
27 Citizen Objection at 1, 12-13 (Dkt. #119).

28 <sup>35</sup> CCAF Objection at 5, 11 (Dkt. #117); Public Citizen Objection 13-14 (Dkt.  
#119)(discussing Ford Rollover settlement and GM Trucks Fuel Tank Liability  
settlement); *Amici's* Brief at 18 (discussing coupons in unsafe crib class action  
settlement).

<sup>36</sup> *In re GM Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d  
768 (3d Cir. 1995).

<sup>37</sup> *Ford Explorer Cases*, J.C.C.P. Nos. 4266 & 4270 (Cal. Sup. Ct., Sacramento).

1 HCH is defective or dangerous – rather, Plaintiffs complaint is that the HCH was  
2 *advertised* in a false and misleading manner. The HCH’s failure to achieve the  
3 advertised gas mileage has no bearing on whether it is a safe, sound, or dependable  
4 car. While a Settlement Class Member may be unwilling to purchase another  
5 vehicle from a manufacturer that is dangerous or otherwise unsafe, leading to  
6 lower redemption rates, the same does not ring true for a vehicle that, while  
7 deceptively advertised, is otherwise functioning properly. Notably, named Plaintiff  
8 Delgado has indicated that would purchase another Honda, despite the misleading  
9 way in which the HCH was advertised. Supplemental Delgado Declaration at 6:4-7  
10 (Plaintiffs’ Final Approval Memorandum, Exhibit D). As such, redemption rates  
11 from defective or dangerous product cases cannot be used to predict redemption  
12 rates in the instant case.

13 Second, Plaintiffs’ expert’s conservative claim rates are based on actual  
14 industry data: (1) a brand loyalty rate of approximately 63%, the highest in the  
15 industry, as reported by J.D. Power in 2008; and (2) the actual rates at which  
16 Americans tend to replace their vehicles.<sup>38</sup> Based on this data, Plaintiffs’ expert  
17 estimated the number of class members *who would be purchasing a Honda in the*  
18 *next two years regardless of the existence of any settlement*, and, even then,  
19 assumed that only a minority of those class members would be claiming the  
20 payments that they are entitled to with no preconditions. Plaintiffs’ expert did not  
21 assume that *anyone* would be incited by the cash payment to purchase a vehicle  
22 that would not otherwise have been purchased, likely rendering his projections  
23 low. Dreze Declaration at 3:11-19; Exhibit C-2 (Plaintiffs’ Final Approval  
24 Memorandum, Exhibit C). Plaintiffs’ expert’s projected claims rates are rendered  
25 even more conservative in light of certain of the clarifications set forth in the Letter  
26 Agreement of February 5, 2010 attached to Plaintiffs’ Motion for Final Approval

27 \_\_\_\_\_  
28 <sup>38</sup> See Dreze Declaration at 3:11-19 (Plaintiffs’ Final Approval Memorandum,  
Exhibit C).



of the Settlement as Exhibit A.<sup>39</sup> For example, removing exclusivity from Option C would increase the number of Settlement Class Members likely to exercise Options A and B. Letter Agreement (Plaintiffs' Final Approval Memorandum, Exhibit A).

Third, while it is correct that consumers do not purchase automobiles every month or every year, the actual frequency at which consumers purchase automobiles is already factored into Plaintiffs' claim projections. Plaintiffs' expert's valuations already take into account the frequency with which American consumers tend to replace their cars, estimated approximately 4.72 years based on industry data, dispelling criticisms that the infrequency of car purchases will diminish these valuations. Dreze Declaration at Exhibit C-2 (Plaintiffs' Final Approval Memorandum, Exhibit C).

### **C . The Claims Procedure is Designed to Maximize Value of the Cash Rebates**

#### **i. Dealership Involvement is Expressly Omitted**

Objectors and the *Amici* claim that dealerships will raise prices in response to the availability of the Cash Rebates, eliminating their value.<sup>40</sup> These Objections must be rejected, as they are based solely on unfounded speculation inconsistent with the current state of the automotive market, and ignore the deliberate design of the claims process. The cash rebate claim procedures were expressly negotiated by Class Counsel to be processed directly by AHM, such that Settlement Class

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<sup>39</sup> Since Plaintiffs' expert's analysis as presented did not take into account the excluded vehicles, the clarification to remove excluded vehicles has no effect on Plaintiffs' expert's valuation of Options A and B.

<sup>40</sup> *Amici's* Brief at 15 (Dkt. #120) (arguing that the cash rebates are somehow worth less than their face value because dealers will be aware of the coupon, that the class notice does not specifically state that the consumer does not have to inform the dealer of the coupon upon purchase, that the settlement ignores premiums over dealer invoice price, and that consumers have been "conditioned to present coupons at the point of sale"); CCAF Objection at 6-7 (Dkt. #117) (making an unsupported argument that coupons are worth less than face value simply because they take time to fill out, noting that Honda already provides discounts on its cars, and arguing that coupons are worth less than face value because they would be induce class members to purchase an item they otherwise wouldn't have purchased)

Members need not inform the dealership of their eligibility for a rebate at point of purchase. Additionally, the Cash Rebates were specifically negotiated to be above and beyond (as well as separate and apart from) any incentive pricing or financing offered by a dealership or AHM. Finally, these speculative objections ignore that the U.S. auto industry is currently experiencing an unprecedented decline in sales, leaving dealerships flooded with excess inventory they cannot afford to keep.<sup>41</sup> If anything, these economic conditions render dealerships *less* likely to raise the price of automobiles, and *more* likely to cut consumers a better deal. As such, these Objections do not form a valid basis for denying final approval.

**ii. Claim Procedures are Not Burdensome**

Objectors complain that the Qualifying Preconditions of logging on to the Fuel Economy Website, entering a VIN, viewing the Fuel Economy Video, obtaining a pre-assigned claim number, and downloading a Claim Form in order to participate in the Settlement present an onerous and unnecessary barrier to obtaining the benefits offered under the Settlement.<sup>42</sup> These Objections do not warrant denial of final approval. First, many of these Objections are mooted by the clarification in the Letter Agreement of February 5, 2010 that Settlement Class Members need not watch the Fuel Economy Video prior to submitting a Claim Form. Letter Agreement at 2 (Plaintiffs' Final Approval Memorandum, Exhibit A). Second, requiring Settlement Class Members to submit a simple Claim Form is a common practice in class action settlements, and does not pose an undue burden.

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<sup>41</sup> See, e.g. Chris Woodyard (USA Today), *Car dealers struggle, cut staff, pay, dividends*, available at [http://www.usatoday.com/money/autos/2009-02-23-car-dealers-struggle\\_N.htm](http://www.usatoday.com/money/autos/2009-02-23-car-dealers-struggle_N.htm) (noting that car dealerships are operating on razor thin margins); Reuters, *State of the U.S. auto industry: bleak*, available at [http://www.reuters.com/article/idUSTRE51A53J20090211?feedType=RSS&feedName=businessNews&utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%253A+reuters%252FbusinessNews+%2528News+%252F+US+%252F+Business+News%2529](http://www.reuters.com/article/idUSTRE51A53J20090211?feedType=RSS&feedName=businessNews&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%253A+reuters%252FbusinessNews+%2528News+%252F+US+%252F+Business+News%2529) (noting that the auto industry is experiencing a period of unprecedented decline).

<sup>42</sup> CCAF Objection at 1, 4, 10, 14 (Dkt. #117); Public Citizen Objection at 1, 16 (Dkt. #119); Vise Objection at 4 (Dkt. #120).

1 *Manual for Complex Litigation* §21.61(4<sup>th</sup> ed. 2004) (noting that requiring a  
2 claimant to submit a claim form is standard procedure in class action settlements).  
3 Finally, the VIN of nearly all Settlement Class Members' Class Vehicles was  
4 included with their Mailed Notice, easing any perceived burden in filling out the  
5 claim form. As such, these Objections do not present valid arguments against final  
6 approval.

7 **iii. Restrictions on Cash Rebates are Minimal**

8 The *Amici* and certain of the Objectors complain about the very modest  
9 restrictions as to which universe of vehicles the cash rebates apply.<sup>43</sup> This  
10 criticisms is moot, as the Letter Agreement of February 5, 2010 clarifies that the  
11 cash rebates may be claimed on *all* new model year 2010 and 2011 Hondas and  
12 Acuras. Letter Agreement (Plaintiffs' Final Approval Memorandum, Exhibit A).

13 **D. Option C Adds Additional Value to the Settlement**

14 Next, the Objectors criticize Option C as being substantially "worthless."  
15 While this Objection is mooted by the clarification in the Letter Agreement of  
16 February 5, 2010 that Option C is not an exclusive remedy, Objectors have largely  
17 missed the point here. Letter Agreement (Plaintiffs' Final Approval Memorandum,  
18 Exhibit A). The Parties emphasize that the value of the Settlement must be  
19 considered in its entirety, instead of through isolation of its component parts. The  
20 purpose of Option C is to provide a benefit class members aggrieved enough to  
21 have taken the first step towards litigation in complaining to AHM.<sup>44</sup> Option C  
22 makes up a very small percentage of the value of the settlement (approximately  
23 one third of 1% of the \$16 million value of Options A and B, and a similarly small  
24 percentage of the value of the DVD). Dreze Declaration at 4:6-10 (Plaintiffs' Final  
25

26 <sup>43</sup> *Amici's* Brief at 16-17 (Dkt. #120); Public Citizen Objection at 15 (Dkt. #119);  
27 CCAF Objection at 5-6, 15 (Dkt. #117).

28 <sup>44</sup> Furthermore, obtaining the benefits offered under Option C is as simple as filling  
out a Claim form, which is made even easier in that Settlement Class Members'  
VIN number was provided to them with the Mailed Notice.

1 Approval Memorandum, Exhibit C). As such, the dollar value of Option C  
2 considered in isolation is not a reasonable means of evaluating the settlement, and  
3 cannot form the basis for denying final approval.

4 **E. The Cash Rebates do not Benefit Honda.**

5 Certain Objectors and the *Amici* argue that the Cash Rebates will benefit  
6 Honda instead of forcing it to disgorge ill-gotten gains, and as such, lack value.<sup>45</sup>  
7 These Objections fail to take into account that Honda has the highest customer  
8 loyalty rate in the auto industry at 63%, and that Plaintiffs' expert's valuations of  
9 the settlement were based on the number of Settlement Class Members who would  
10 have purchased a new vehicle during the redemption period of the cash rebates  
11 (before the recent additional passage of time), regardless of any settlement in this  
12 action.<sup>46</sup> Since these are sales that would have happened anyway, the cash rebates  
13 paid out under this settlement are coming directly out of Honda's pocket. As such,  
14 these objections lack merit.

15 **VI. REMAINING OBJECTIONS TO THE SETTLEMENT DO NOT**  
16 **WARRANT DENIAL OF FINAL APPROVAL**

17 **A. Arguments that do not Address the Settlement's Terms Must Be**  
18 **Ignored**

19 Certain of the arguments advanced by the Objectors and commenting  
20 Settlement Class Members are wholly unrelated to the Settlement and its terms.  
21 These arguments include: (1) expressions of satisfaction with AHM or the HCH  
22 and the belief that the Lawsuit is unwarranted; (2) expressions of dissatisfaction  
23 with class actions and/or attorneys in general; and (3) proclamations that the  
24 Settlement would somehow frustrate societal ideals. Those in the first two  
25 categories would likely oppose ANY settlement of the action, no matter how fair,

26 <sup>45</sup> *Amici's* Brief at 17-19 (Dkt. #120); CCAF Objection at 8 (Dkt. #117); Public  
27 Citizen Objection at 1 (Dkt. #119); Peterman Objection at 3 (Dkt. #123).

28 <sup>46</sup> See Dreze Declaration at Exhibit C-2 (Plaintiffs' Final Approval Memorandum,  
Exhibit C).

1 reasonable, or adequate the terms.<sup>47</sup> Additionally, certain statements falling into  
2 these categories *support*, rather than oppose, the argument that the settlement  
3 provides valuable relief to the Settlement Class (particularly with respect to the  
4 DVD component of the settlement).<sup>48</sup> Arguments falling in the third category are  
5 wholly unrelated to the merits of the underlying Lawsuit, and cannot reasonably be  
6 considered when evaluating the proposed Settlement.<sup>49</sup> Only arguments that  
7 address the settlement terms may be considered when evaluating whether a  
8 proposed settlement is fair and reasonable. *Wilson v. Airborne, Inc.*, 2008 U.S.  
9 Dist. LEXIS 110411 at \*22-23 (C.D. Cal. Aug. 13, 2008) (rejecting all objections  
10 addressing the filing of the lawsuit or offering support for defendants on the  
11 grounds that they do not address the settlement terms). As such, Objectors  
12 opposing the Settlement on grounds unrelated to the Settlement's terms must be  
13 ignored.<sup>50</sup>

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15 <sup>47</sup> See, e.g., Letter Objection of Daniel Bergman (Exh. A pg. 5-6)(noting that "I  
16 object to the settlement on the grounds that the case is frivolous."); Letter  
17 Objection of Norman Whitton (Exh. A. pg. 2-4) (noting that "this lawsuit and  
resulting settlement continues a trend of frivolous legal maneuvers that result in  
enrichment of the attorneys with no societal benefit")

18 <sup>48</sup> See, e.g., Letter Objection of Daniel Bergman (Exh. A pg. 5-6)(noting that "I  
19 get 45-50 mpg with my car and the only way I could possibly get 32 mpg (as  
the plaintiffs claim) would be **to drive the car in a manner in which it was  
not intended.**") (emphasis added); see also Comment of Debbie Smith (Exh. B  
20 pg 36)(stating that "[t]here is an art to driving a Hybrid Civic . . . You have to  
learn how to drive this vehicle in order to make it fuel efficient . . .").

21 <sup>49</sup> See, e.g., Letter Objection of Norman Whitton (Exh. A. pg. 2-4)(noting that  
22 "this lawsuit and settlement will cause a chilling effect in our society, with  
regard to the implementation of new energy efficient technology . . . Further,  
23 this effect is likely to be transferred to innovations and technologies outside of  
the specific realm of motor vehicles. Our society is highly dependent on fossil  
24 fuels . . . Inefficient use of these fossil fuels also contributes to global warming,  
with major future societal consequences. In sum, THIS LAWSUIT DRIVES  
25 OUR SOCIETY IN THE WRONG DIRECTION.") (emphasis in original);

26 <sup>50</sup> The following five Objectors fall into this category: Objection of Norman  
Whitton (Exh. A. pg. 2-4); Objection of Daniel Bergman (Exh. A pg. 5-6);  
27 Objection of Gerald Nicholson (Exh. A pg. 18-33); Objection of Keith R.  
Cyrnek (Exh. A pg. 7-9); Objection of Robert A. Tighe (Exh. A pg. 16-17). The  
28 following commenting Settlement Class Members also advanced arguments  
unrelated to the settlement terms: Comment of Eric Strickland (Exh. B pg. 39-  
43) (ineligible to object based on opt-out status); Comment of David V.



**B. Professional Objectors Do Not Meaningfully Advance the Interests of the Settlement Class**

The status and intentions of Objectors cannot be ignored when evaluating the merits of their objections. It must be emphasized that the four objections filed by represented Settlement Class Members were quite clearly filed by "professional objectors." The Public Citizen Litigation Group may have three clients, but they are all lawyers themselves and can hardly be deemed typical class members. Lawyer Edward F. Siegel, who filed the Peterman Objection, is a frequent serial objector, and he represents a client whom he previously represented as an objector in the earlier Honda defective odometer litigation.<sup>51</sup> Mr. Siegel has referred to his work as an objector as a "nice side source of income."<sup>52</sup> Courts have repeatedly questioned the motives and assistance rendered by Mr. Siegel. For example, in *In re AT&T Corporation Securities Litigation*, Case No. 00-5364 (D.C.N.J. 2006), Chief Judge Brown of the United States District Court for the District of New Jersey said of Mr. Siegel, "[t]he objections and the subsequent appeal were without merit and failed to improve the Class's recovery in any manner ... the Objectors' actions appear to have impeded the Class's recovery – their objections and subsequent appeal resulted in wasteful litigation and delayed the distribution of funds to the Class." Lawyer Marianne P. Borselle, Esq., who filed the Vise Objection, apparently aspires to emulate Mr. Siegel, having filed a boilerplate bare-bones objection in which she made reference to an "Airborne" settlement, and referred to her client (named Richard Vise) as "Objector Blakely." Lawyer Theodore H. Frank, Esq., of the so-called "Center for Class Action Fairness," who

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Sherwood (Exh. B pg. 37-38) (ineligible to object based on opt-out status); Comment of Jason Novak (Exh. B. pg. 44) (ineligible to object based on opt-out status); Comment of Debbie Smith (Exh. B pg 36).

<sup>51</sup> *Vaughn v. Am. Honda Motor Co.*, No. 2-04CV-142 (E.D. Tex.)

<sup>52</sup> See <http://www.clevescene.com/cleveland/edward-siegel-is-on-a-quest-to-either-stop-exorbitant-lawyer-payouts-151-or-score-some-easy-money/Content?oid=1506021>

1 filed the CCAF Objection, is an avowed anti-litigation activist, and would likely be  
2 against virtually *any* consumer litigation. In testimony before the Senate  
3 Republican Conference on March 16, 2009, Mr. Frank indicated his belief that  
4 class actions cost the United States economy over \$900 billion per year, or \$12,000  
5 for an average family of four.<sup>53</sup> In the later part of 2009 Mr. Frank established the  
6 Center for Class Action Fairness, which he refers to as a “guerilla operation”  
7 dedicated almost exclusively to challenging class actions.<sup>54</sup>

8 Notably, while these professional objectors are quick to identify perceived  
9 flaws in the Settlement, none purport to offer solutions that would benefit the  
10 Settlement Class. Instead, these professional objectors ostensibly seek only fees for  
11 their “contributions” to the settlement process. Equally notably, none of the  
12 Objectors or *Amici* have deemed the matter at bar sufficiently important for them  
13 to investigate Honda's deceptive advertising themselves or, even less, actually do  
14 anything about it.

15 **C. Dissatisfied Class Members May Opt Out of the Settlement**

16 The opt-out remedy is designed to provide dissatisfied Settlement Class  
17 Members with the opportunity to remove themselves from the Lawsuit and  
18 preserve their claims. To the extent that Objectors do not feel that the Settlement is  
19 adequate to address their claims, they may request permission to opt-out of the  
20 Settlement. Given the availability of the opt-out remedy, the dissatisfaction of a  
21 handful of Settlement Class Members over the terms of the Settlement should not  
22 constitute grounds for denying final approval of the Settlement.

23 **VI. CONCLUSION**

24 As set forth in Plaintiffs’ Memorandum in Support of Final Approval of the  
25 Settlement, filed concurrently herewith, the Settlement meets all the criteria for  
26

27 <sup>53</sup> See <http://www.aei.org/docLib/Frank%20testimony.pdf>

28 <sup>54</sup> See [http://legalpad.typepad.com/my\\_weblog/2009/09/class-action-avenger-discusses-coupon-crusades.html](http://legalpad.typepad.com/my_weblog/2009/09/class-action-avenger-discusses-coupon-crusades.html)

1 Final Approval and provides real relief to the Settlement Class. The arguments of  
2 the Objectors, *Amici*, and commenting Settlement Class Members do not provide a  
3 reasonable basis to deny final approval. As such, Plaintiffs request that this Court  
4 ignore the Objections and grant final approval to the Settlement.

5  
6 Respectfully Submitted,

7  
8  
9 Date: February 8, 2010

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